IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 3416 of 2005

Between:

Mohammed Ayub Khan, S/o. Mohammed Yousuf Khan,
R/o. 12-1-565/A, Muradnagar, Hyderabad.

..... PETITIONER

AND

The Regional Passport Officer, Passport Office, Hyderabad,
Having Office at Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue the writ or orders more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent in not considering the Affidavit of the Petitioner dated 13/12/2004 for correction of date of birth in the existing passport as per SSC certificate is arbitrary, discriminatory and violation of principles of natural justice which is against the spirit of constitution of India and consequently direct the respondent to correct the date of birth as 04-06-1972 instead of 15-06-1969 in the petitioner's Passport No. B-2420230 issued on 03-08-2000.

Counsel for the Petitioner: MR.NAZIR AHMED KHAN

Counsel for the Respondent: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following:

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ORDER:

This petition is filed seeking a direction to the respondent to correct the date of birth of the petitioner in his passport as 04-06-1972 in place of 15-06-1969.

The case of the petitioner is that, in 1990, his father had applied for passport on his behalf, mentioning his date of birth as 15-06-1969 when in fact his correct date of birth is

04-06-1972 and after he noticed that mistake, he requested the respondent to correct his date of birth in the passport, but the respondent is not taking any action on his application. The case of the respondent is that since he is not the authority to correct the date of birth of the petitioner in passport, he cannot make any correction regarding the date of birth of petitioner in his passport.

Heard both sides.

No provision in the Passports Act, 1967 empowers the Regional Passport Officer to correct the entries in the passport. But, in the Circular dated 18-04-2001, Government of India issued instructions/clarifications regarding correction of entries relating the date of birth, place of birth in passports. They are:

a. Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (Passport Issuing Authority) may after verifying/satisfying himself, effect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

b. Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendments to the same.

c. Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., school/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth."

When it is the case of the petitioner that it is his father, but not he, that had applied for the passport for him, petitioner ought to have filed the affidavit of his father stating as to on what basis he had shown the date of birth of the petitioner as 15-06-1969 in the application for passport. The case of the petitioner is that since his date of birth is mentioned as 04-06-1972 in the Transfer Certificate and Secondary School Certificate, that is his correct age. That assumption of the petitioner is not and cannot be true, because the Apex Court in **BRIJ MOHAN v. PRIYA BRAT** held that *"in actual life it often happens that persons give false age of the boy at the time of his admission to a school".* In fact, in **BIRAD MAL SINGHVI v. ANAND PUROHIT ,** the apex court after referring to the decisions of several High Courts on the probative value of entries relating to date of birth made in the scholar's register or in school certificate, held that the date of birth mentioned in the scholar's register of secondary school certificate has no probative value, unless either the parents or the person on whose information the entry may have been made, is examined. So, the date of birth of the petitioner mentioned in the Transfer Certificate and Secondary School Certificate cannot be presumed to be true or that the date of birth mentioned in the passport of the petitioner is wrong.

As stated earlier, petitioner did not file the affidavit of his father, stating the reasons for his giving a wrong date of birth in the application for passport, submitted by him on behalf of the petitioner. It is also not known as to what proof was submitted relating to the date of birth of the petitioner when the application for passport was first made.

In the above circumstances, unless petitioner obtains a declaration from a competent Civil Court regarding his correct date of birth, question of the respondent correcting his date of birth does not arise, and so, respondent not acting on the request of the petitioner cannot be said to be erroneous.

Petitioner is at liberty to file a Suit and obtain a declaration regarding his date

of birth and can approach the respondent then with a request to make the corrections, as per the declaration obtained by him, in his passport.

With the above observation, the petition is dismissed. On an application made by the petitioner for return of his passport, the respondent shall return the passport of the petitioner to the petitioner.

Petition is ordered accordingly.

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(C.Y.SOMAYAJULU, J)

Dated April 12, 2005.

NOTE:

Issue C.C. in two days.

B/O

YCR

To

1. The Regional Passport Officer, Passport Office, Hyderabad,
   Having Office at Secunderabad.

2. 2 CD copies

*Form-NIC-OGS/WP{**SPJS**}*